

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

Chapter 11

KOLLEL MATEH EFRAIM, LLC, a/k/a
MATEH EPHRAIM LLC, a/k/a
KOLEL MATEH EFRAIM

Case No. 04-16410 (SMB)

Debtor.

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**APPELLANT'S DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON
APPEAL AND STATEMENT OF ISSUES FOR APPEAL**

Kollet Match Efraim, a/k/a Match Ephraim LLC, a/k/a Kolel Match Efraim

("Debtor" or "Appellant"), pursuant to Federal Rule of Bankruptcy Procedure 8006, for its designation of items to be included in the record and statement of the issues for appeal, states as follows:

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Exhibit Number	ECF Docket Number	Description
1	54	Transcript of Hearing held on July 20, 2005
2	39	Debtor's Notice of Proposed Order, with attachments
3	40	Debtor's Notice of Settlement of Order, with attachments
4	41	Helen-May Holdings, LLC's ("HMH") Objection to Motion/proposed "Order Approving Settlement"
5	42	Debtor's Response to Objection to Proposed Order Approving Settlement
6	43	HMH's Objection in further Opposition to Debtor's Notice of Settlement of Proposed Order and in Reply to Debtor's Response to HMH's Objection
7	44	Debtor's Motion to Approve/Enforce the July 20, 2005 Settlement

8	46	HMH's Response to Motion to Enforce Settlement
9	48	Response by the Debtors to HMH's Response and in further Support of the Debtor's Motion to Enforce the July 20, 2005 Settlement Agreement
10	52	Transcript of Hearing held on June 28, 2005
11	53	Transcript of Hearing held on November 22, 2005
12	55	Written Opinion and Order Denying Motion for Summary Judgment
13	75	Transcript of Hearing/Trial held on July 19, 2006
14	77	Transcript of Hearing/Trial held on July 24, 2006
15	76	Transcript of Hearing/Trial held on July 27, 2006
16	79	HMH's Findings of Fact and Conclusions of Law
17	85	Debtor's Findings of Fact and Conclusions of Law
18	86	HMH's Reply to Motion and Proposed Findings of Fact of the Debtor
19	87	Debtor's Designation of Testimony from the Deposition of Irene Griffin, dated August 11, 2006
20	88	Debtor's Designation of Testimony from the Deposition of Gerald Orseck ("Orseck"), dated August 11, 2006
21	89	Debtor's Designation of Testimony from the Deposition of Gene Barbanti ("Barbanti"), dated August 11, 2006
22	90	Debtor's Designation of Testimony from the Deposition of Kirk Orseck, dated August 11, 2006
23	91	Debtor's Designation of Testimony from the Deposition of Paul Griffin ("P. Griffin"), dated August 11, 2006
24	92	Debtor's Designation of Testimony from the Deposition of Daniel Scher ("Scher"), dated August 11, 2006
25	93	Debtor's Counter-Designation of Testimony from the Deposition of Scott Krinsky ("Krinsky"), dated December 27, 2006
26	95	Memorandum Endorsement and Order signed on February 16, 2007 Striking Designations
27	96	Post-Trial Findings of Fact and Conclusions of Law signed on February 23, 2007
28	97	HMH's Notice of Presentment of proposed order

29	99	Order Denying Motion to Enforce Terms of a Settlement signed on March 6, 2007
30	100	Notice of Appeal
31		Debtor Trial Ex. 1; May 16, 2005 Consent to Change Attorney
32		Debtor Trial Ex. 2; May 25, 2005 Memo from P. Griffin to Orseck
33		Debtor Trial Ex. 7; July 18, 2005 settlement letter from Krinsky to Orseck
34		Debtor Trial Ex. 8; July 19, 2005 letter from Orseck to Krinsky
35		Debtor Trial Ex. 9; July 18, 2005 fax letter from HMH to Orseck
36		Debtor Trial Ex. 10; Portions of Transcript of July 20, 2005 Hearing containing Settlement on the Record
37		Debtor Trial Ex. 11; July 20, 2005 E-Mails from P. Griffin to Orseck
38		Debtor Trial Ex. 12; July 20, 2005 E-Mail from P. Griffin to Scher: "Subject Settlement"
39		Debtor Trial Ex. 13; July 20, 2005 Fax from HMH to Orseck
40		Debtor Trial Ex. 14; July 20, 2005 E-Mail from P. Griffin to Scher
41		Debtor Trial Ex. 15; July 25, 2005 E-Mail from P. Griffin to Scher: Subject "Settlement Offer"
42		Debtor Trial Ex. 19; August 5, 2005 Fax from HMH to Orseck
43		Debtor Trial Ex. 20; August 5, 2005 E-Mail from Scher to Orseck and P. Griffin with attached Notice of Settlement
44		Debtor Trial Ex. 23; August 10, 2005 Letter from Orseck to Backenroth, Frankel & Krinsky, LLP ("BFK")
45	41	Debtor Trial Ex. 26; August 11, 2005 HMH Objection to Proposed Order Approving Settlement
46		Debtor Trial Ex. 27; August 11, 2005 Fax from Scher to Orseck with attached Amended HMH Objection to Proposed Order Approving Settlement
47		Debtor Trial Ex. 28; Various E-Mails and Letters from August 15, 2005 through September 7, 2005 sent by Scher, P.Griffin or Orseck and received by Scher, P.Griffin, Orseck and HMH

48		Debtor Trial Ex. 31; August 30, 2005 Invoice from TypeWrite Word Processing Service ("TypeWrite") and Completed TypeWrite Order Form from Scher, dated August 30, 2005, Ordering July 20, 2005 Transcript and Fax Sheet from Scher to TypeWrite
49		Debtor Trial Ex. 33A; August 30, 2005 E-Mail from Scher to P. Griffin re July 20, 2005 Transcript
50		Debtor Trial Ex. 33B; September 1, 2005 E-Mail from P. Griffin to Scher re July 20, 2005 Transcript
51		Debtor Trial Ex. 34; August 30, 2005 Letter from Orseck to BFK
52		Debtor Trial Ex. 36; September 7, 2005 Fax Letter from Orseck to Mark Frankel ("Frankel") of BFK; & September 7, 2005 Fax Letter from Frankel to Orseck
53		Debtor Trial Ex. 40A; August 16, 2005 E-Mail from Scher to Orseck
54		Debtor Trial Ex. 40B; September 6, 2005 Letter from Scher to Orseck
55		Debtor Trial Ex. 42; September 15, 2005 Stipulation of Substitution of Counsel
56		Debtor Trial Ex. 43; November 16, 2005 Orseck Motion to be Relieved as Counsel to I.Griffin & P.Griffin in the action entitled <u>Griffin v. Chrabuszc</u> , Index No. 2892/03 (Sup.Ct. Sullivan Co.)(the "Griffin Action")
57		Debtor Trial Ex. 44; June 13, 2006 Docket Sheet for the Griffin Action
58		Debtor Trial Ex. 53; June 18, 2005 Letter from P.Griffin /HMH to Barbanti
59		HMH Trial Ex. 2; May 16, 2005 letter from Orseck to Abraham Backenroth
60		HMH Trial Ex. 3; June 3, 2005 letter from Orseck to Krinsky
61	54	HMH Trial Ex. 17; July 20, 2005 Transcript of Hearing
62		HMH Trial Ex. 18; Monthly Telephone Bills

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in denying the Debtor's motion to enforce the July 20, 2005 settlement made on the record in open Court between Debtor's counsel and HMH's counsel, Orseck.

2. Whether the Bankruptcy Court erred in ruling that Orseck lacked apparent authority to enter into the July 20, 2005 settlement made on the record in open Court, especially since (a) the attorneys, including HMH's counsel, Orseck, had appeared at court conferences, including a settlement conference, and were thereby required under FRCP 16(c), made applicable through FRBP 7016, to have settlement authority; (b) HMH knew that its counsel, Orseck, was discussing settlement with Debtor's counsel prior to the July 20, 2005 settlement; (c) HMH failed to promptly advise the Court of Orseck's unauthorized settlement conduct; (d) Orseck continued to represent HMH post-Settlement, including in attempting to schedule post-Settlement negotiations; and (e) HMH's counsel, Orseck, admittedly had settlement authority, albeit at higher numbers.

3. Whether the Bankruptcy Court erred in ruling that HMH met its burden of demonstrating that Orseck lacked actual authority to enter into the July 20, 2005 settlement made on the record in open Court.

The Appellant reserves the right to modify, restate and/or supplement the foregoing designation of items and statement of issues to the fullest extent permitted by the Bankruptcy Code and Rules.

Dated: New York, New York
March 25, 2007

BACKENROTH FRANKEL & KRINSKY LLP

By: /s/ Scott Krinsky

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